



CONDITIONS OF CONTRACT FOR SERVICES

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D1. DEFINITIONS

In the Contract the following words shall have the following meanings unless the context requires otherwise:

“Acceptance” means the written acceptance of MHCLG’s Contract Manager given in accordance with any acceptance procedures set out in the Contract;

“Annex” means, unless otherwise provided, the relevant annex referred to in Schedule 1;

“Deliverables” means anything specified in the Contract to be delivered by the Contractor to MHCLG under the Contract including reports, manuals and other documentation and outputs;

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by MHCLG or



- the Replacement Contractor to a Transferring Contractor Employee which would have been payable by the Contractor or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
 - g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Former Contractor” means a contractor supplying the Services to MHCLG before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such contractor (or any sub-contractor of any such sub-contractor);

“Key Personnel” means any of the Contractor’s Personnel named in the Contract as key personnel or any of the Contractor’s Personnel who MHCLG notifies to the Contractor in writing are to be regarded as key personnel;

“Premises” means the location(s) where the Services are to be performed as specified in the Contract;

“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date” means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Replacement Contractor” means any third party provider of Replacement Services appointed by or at the direction of MHCLG from time to time or where MHCLG is providing Replacement Services for its own account, shall also include MHCLG;

“Replacement Sub-Contractor” means a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

“Schedule 1” means, unless otherwise provided, schedule 1 of this Annex B Part D Conditions of Contract for Services, which relates to staff transfer;

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-Contractor to a Replacement Contractor or a Replacement Sub-Contractor;

“Service Transfer Date” means the date of a Service Transfer;

“Services” means the services to be provided as specified in the Contract including the production of any Deliverables and any planning, preliminary and preparatory work;

D2. THE SERVICES

- D2.1 The Contractor’s Personnel shall undertake the Services with reasonable skill, care and diligence in accordance with the Contract and good industry practice and to the reasonable satisfaction of MHCLG.



- D2.2 Timely provision of the Services shall be of the essence of the Contract and failure to commence or provide the Services within the time promised or specified shall enable MHCLG (at MHCLG's option acting reasonably) to release itself from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract, in either case without additional cost and without prejudice to MHCLG's other rights and remedies.

D3. VARIATION OF THE SERVICES

- D3.1 MHCLG reserves the right from time to time during the term of the Contract in accordance with any change control procedures set out in the Contract to add to, omit, or otherwise vary the Services including the order in which the Services are to be delivered or the locations where the Services are to be provided and any alteration to the prices or completion date arising by reason of such variation shall be agreed between the Parties and shall properly and fairly reflect the nature and extent of the variation in all the circumstances.

D4. CONTRACTOR'S PERSONNEL

- D4.1 The Contractor shall make the Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of MHCLG, such approval not to be unreasonably withheld. Whenever, for any reason, the Key Personnel are unavailable for the performance of the Services, the Contractor shall as soon as reasonably practicable substitute suitably qualified replacements acceptable to MHCLG.
- D4.2 If and when requested by MHCLG, the Contractor shall provide MHCLG with a list of the names of all the Contractor's Personnel who may at any time be concerned with the provision of the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity, qualifications, experience and other supporting evidence as MHCLG may reasonably require.
- D4.3 Where MHCLG reasonably requires by notice to the Contractor that any of the Contractor's Personnel is not to become involved in or is to be removed from involvement in the Services, the Contractor shall take all reasonable steps to comply with such notice. The Contractor shall replace any such person with someone with equivalent experience, qualifications, training and security clearance.
- D4.4 The decision of MHCLG as to whether any person is not to become involved in or is to be removed from involvement in the Services, as to the designation or approval of Key Personnel and as to whether the Contractor has furnished the information or taken the steps required by this Condition D4 shall be final and conclusive.
- D4.5 The Contractor shall:
- D4.5.1 take instructions and all directions and, where appropriate, receive MHCLG's decisions only through MHCLG's Contract Manager;
 - D4.5.2 act in accordance with all reasonable instructions and directions in carrying out the Services;
 - D4.5.3 keep MHCLG's Contract Manager advised on all matters materially related to its performance of the Services according to reporting formats specified by MHCLG;



- D4.5.4 answer all reasonable enquiries received from MHCLG's Contract Manager;
- D4.5.5 attend or be represented at regular meetings as requested by MHCLG from time to time.

- D4.6 The Contractor shall ensure that leave is taken by the Key Personnel on dates which do not interfere with the proper delivery of the Services and shall consult with MHCLG's Contract Manager before allowing leave to be taken.
- D4.7 The Contractor shall not vary the Contract prices at anytime during the term of the Contract including any extension due to the promotion of any of the Contractor Personnel.
- D4.8 The Contractor shall bear the cost of any notice, instruction or decision of MHCLG under this Condition D4.

D5. MEETINGS AND REPORTING

- D5.1 The Contractor and the Contractor's Personnel shall upon receipt of reasonable notice and during office hours attend all meetings arranged by MHCLG's Contract Manager for the discussion of matters connected with the performance of the Services.
- D5.2 The Contractor and the Contractor's Personnel shall provide MHCLG's Contract Manager with such reports of the Services and copies of the Deliverables at such intervals and in such form as MHCLG may from time to time reasonably require.

D6. EQUIPMENT, PLANT AND MATERIALS

- D6.1 The Contractor shall provide all equipment, plant and materials necessary for the provision of the Services except where otherwise agreed in the Contract.
- D6.2 In the event that the Contractor procures goods or services including equipment from third parties on behalf of MHCLG, it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a contracting authority within the meaning of those regulations and in accordance with all other applicable domestic and European law.
- D6.3 Where MHCLG in accordance with the Contract issues equipment, plant or materials free of charge to the Contractor such equipment, plant or materials shall be and remain the property of MHCLG. The Contractor shall not in any circumstances have a lien on the equipment, plant or materials and shall take all steps necessary to ensure that the title of MHCLG and the exclusion of any lien are brought to the attention of any third party dealing with the equipment, plant and materials.
- D6.4 The Contractor shall maintain all equipment, plant and materials provided by MHCLG in good order and condition and shall use such equipment, plant and materials solely in connection with the Contract. The Contractor shall notify MHCLG of any surplus materials remaining after completion of the Services and shall dispose of them as MHCLG may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or the Contractor's Personnel shall be made good at the Contractor's expense. Without prejudice to any other of the rights of MHCLG, the Contractor shall deliver up such equipment, plant or materials whether processed or not to MHCLG on demand.

D7. INSPECTION



- D7.1 MHCLG shall be entitled to inspect and examine the performance of the Services and the Contractor shall afford all reasonable access, facilities and assistance required by MHCLG for any inspection and examination free of charge.
- D7.2 No failure to make complaint at the time of such inspection and no approval given during or after such inspections shall constitute a waiver by MHCLG of any rights or remedies in respect of the Services.

D8. ACCEPTANCE PROCEDURE

- D8.1 This Condition D8 shall apply in the absence of any specific acceptance procedures elsewhere in the Contract.
- D8.2 The Contractor shall make available any Deliverables to MHCLG's Contract Manager for Acceptance.
- D8.3 The Acceptance of a Deliverable shall be carried out by MHCLG with the co-operation of the Contractor, within 15 days (or such other period as the Parties may agree in writing) of the Contractor making the Deliverable available to MHCLG during which time MHCLG must determine whether the Deliverable meets the requirements defined and/or any acceptance criteria agreed in writing prior to the commencement of the acceptance procedure.
- D8.4 If it is determined that the Deliverable meets the requirements defined and/or any acceptance criteria agreed MHCLG shall promptly notify the Contractor in writing of its Acceptance.
- D8.5 If it is determined that the Deliverable, or any part of it, does not meet the requirements defined and/or any acceptance criteria agreed, MHCLG shall extend the acceptance period by 10 days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.
- D8.6 If, after MHCLG has extended the acceptance period pursuant to Clause D8.5 above, the acceptance has not been recorded as successful by the end of that period, MHCLG shall, have the right, without prejudice to its other rights and remedies:
- D8.6.1 to accept such part of the work as MHCLG may decide and pay a charge calculated on a pro rata basis therefor or such other charge as may be agreed between the Parties; or
- D8.6.2 to extend the acceptance period for a period or periods, specified by MHCLG, during which the Contractor shall correct the fault that caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.

D9. MHCLG PREMISES

- D9.1 This Condition D9 shall only apply where the Premises are provided by or on behalf of MHCLG.



- D9.2 Access to the Premises shall be made available to the Contractor free of charge and shall be used solely for the purposes of performing the Contract. The Contractor shall have use of the Premises as licensee.
- D9.3 Access to the Premises shall not be exclusive to the Contractor but shall be such as to enable the Contractor to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as MHCLG may reasonably require.
- D9.4 Where any of the Contractor's Personnel is replaced in accordance with D4 the Contractor shall take any steps reasonably required by MHCLG to prevent such Contractor's Personnel being admitted to the Premises.
- D9.6 The Contractor shall make no delivery of its equipment, plant or materials nor commence the Services on the Premises without MHCLG's Contract Manager's prior approval.
- D9.7 The Contractor shall maintain its items of equipment, plant and materials within the Premises in a safe, serviceable and clean condition.
- D9.8 All equipment, plant and materials brought onto the Premises by the Contractor shall be at the Contractor's own risk and MHCLG shall have no liability for any loss of or damage to the same unless the Contractor can demonstrate that such loss or damage was caused by the wilful act of MHCLG.
- D9.9 The Contractor shall provide for the haulage or carriage of its equipment, plant or materials to the Premises and the removal therefrom when no longer required at the Contractor's sole cost.
- D9.10 MHCLG shall have the power at any time during the Contract to order in writing that the Contractor:
- D9.10.1 remove from the Premises any of its equipment, plant or materials which in the opinion of MHCLG is either hazardous, noxious or not in accordance with the Contract; and
 - D9.10.2 substitute proper and suitable equipment, plant and materials.
- D9.11 On completion of the Services the Contractor shall remove its equipment, plant and unused materials and shall clear away from the Premises all rubbish arising out the Services and leave the Premises in a neat and tidy condition.
- D9.12 The Contractor shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by the Contractor's Personnel other than fair wear and tear.
- D9.13 Continuity of electricity, heating, telephone, water supplies, stationery and sewerage ("Supplies") at the Premises is not guaranteed and no liability will be accepted by MHCLG for shut-down or restrictions due to any cause whatsoever.
- D9.14 The Contractor's Personnel shall ensure that the Premises are used with due regard for the need for the efficient use and conservation of Supplies and MHCLG shall not bear the costs of any use of such Supplies by the Contractor's Personnel which do not conform to the requirements of this Clause D9.14.



D10. HEALTH AND SAFETY AND SECURITY

- D10.1 The Contractor shall notify MHCLG if the Services are hazardous to health or safety and of the precautions that should be taken in respect thereto.
- D10.2 MHCLG shall notify the Contractor of any special health and safety hazards which MHCLG becomes aware of in relation to the Premises, where the Premises are provided by or on behalf of MHCLG, which may affect the Contractor's performance of the Services. If MHCLG notifies the Contractor of any special health and safety hazards the Contractor shall draw any such hazards to the attention of the Contractor's Personnel.
- D10.3 The Contractor shall be responsible for the observance by itself and the Contractor's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Contractor's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Contractor and the Contractor's Personnel shall co-operate fully with MHCLG to ensure the proper discharge of these duties.
- D10.4 Where the Premises are provided by or on behalf of the Contractor MHCLG shall be entitled to inspect the Premises to ensure they are appropriate for the provision of the Services.
- D10.5 Accidents to the Contractor's Personnel at the Premises which ordinarily are required to be reported in accordance with the Health and Safety at Work Act 1974 shall be reported immediately to MHCLG's Contract Manager.
- D10.6 MHCLG may undertake security and/or identity checks on any of the Contractor's Personnel requiring unescorted access to MHCLG's Premises or IT network. The Contractor and the Contractor's Personnel must comply with MHCLG's arrangements for undertaking security and identity checks.

D11. PAYMENT

- D11.1 This Condition D11 shall apply in the absence of any specific provision for payment elsewhere in the Contract.
- D11.2 The Contractor shall submit a single, fully itemised invoice at the end of each calendar month in respect of the Services undertaken during that month unless the Contract specifies payment is due upon Acceptance of the Services or Deliverables in which case the Contractor shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.
- D11.3 The invoice must clearly identify the Services and/or Deliverables to which the invoice relates.

D12. NOT USED

D13. NOT USED

D14. NOT USED



D15. SOLICITING FOR EMPLOYMENT

- D15.1 Each Party to the Contract undertakes not to attempt to solicit nor procure the service or employment of employees of the other Party or persons engaged under a contract for services with the other Party during the term of the Contract and within six calendar months after the termination or expiry of the Contract without the prior written permission of the other Party.
- D15.2 Clause D15.1 shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business. In such event, neither Party shall have any obligation or liability to the other by way of introductory or finder's fee.

D16. BUSINESS CONTINUITY PLANNING

- D16.1 MHCLG may require the Contractor to develop and agree with MHCLG a business continuity plan. Where so required the Contractor shall:
- D16.1.1 in accordance with good industry practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of the Contractor to perform the Services in accordance with this Contract, including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain, pandemic and loss of Key Personnel; and
 - D16.1.2 keep the plans under review and make such changes, from time to time, as shall be required in accordance with good industry practice.
- D16.2 MHCLG shall be entitled to review any business continuity plans developed under this Contract at any time and, at its sole discretion, make suggested changes or amendments to the plans which the Contractor, acting reasonably shall consider and, after consultation and agreement with MHCLG, put in place.

D17. EXIT AND SKILLS TRANSFER

- D17.1 MHCLG may require the Contractor to develop and agree with MHCLG an exit and skills transfer plan describing how the Services shall be handed over and appropriate skills transferred. Any such exit and skills transfer plan will be developed in line with MHCLG's requirements and updated through the term of the Contract.

D18. NON-EXCLUSIVITY

- D18.1 MHCLG may at any time engage other persons to provide services of the same type as the Services.

D19. BREAK

- D19.1 In addition to MHCLG's other rights to terminate the Contract MHCLG shall be entitled to terminate the Contract or any part thereof by giving to the Contractor not less than:
- D19.1.1 15 Days notice to that effect where the term of the Contract is less than 90 Days.



D19.1.2 30 Days notice to that effect where the term of the contract is 90 Days or more.

D19.2 Where MHCLG terminates the Contract under Clause D19.1, MHCLG shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under D19.1.

D19.3 MHCLG shall not be liable under Clause D19.2 to pay any sum which:

D19.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

D19.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated in accordance with Clause D19.1.